

1 except as expressly admitted herein, defendants deny each and every remaining allegation
2 contained in that unnumbered second paragraph of plaintiff's complaint.

3 3. Answering paragraph 1 of plaintiff's complaint, UNUM admits that it has
4 received information that plaintiff was a resident of the City and County of San Francisco,
5 California. Save and except as expressly admitted herein UNUM denies each and every
6 remaining allegation contained in paragraph 1 of plaintiff's complaint.

7 4. Answering paragraph 2 of plaintiff's complaint, UNUM admits that it has
8 received information that plaintiff was an employee of co-defendant HEALTH INITIATIVES
9 FOR YOUTH ("HIFY") in San Francisco some of the time, but not all of the time, mentioned
10 herein. Save and except as expressly admitted herein UNUM denies each and every remaining
11 allegation contained in paragraph 2 of plaintiff's complaint.

12 5. Answering paragraph 3 of plaintiff's complaint, UNUM is without sufficient
13 information or belief to either admit or deny the allegations contained in paragraph 3 of
14 plaintiff's complaint and on that basis denies the same.

15 6. Answering paragraph 4 of plaintiff's complaint, UNUM is without sufficient
16 information or belief to either admit or deny the allegations contained in paragraph 4 of
17 plaintiff's complaint and on that basis denies the same.

18 7. Answering paragraph 5 of plaintiff's complaint, UNUM is without sufficient
19 information or belief to either admit or deny the allegations contained in paragraph 5 of
20 plaintiff's complaint and on that basis denies the same.

21 8. Answering paragraph 6 of plaintiff's complaint, UNUM admits that HIFY
22 purchased group long term disability insurance, policy number 108878 for its eligible employees
23 from UNUM. Save and except as expressly admitted herein, UNUM denies each and every
24 remaining allegation contained in paragraph 6 of plaintiff's complaint.

25 9. Answering paragraph 7 of plaintiff's complaint, UNUM admits that it is an
26 insurance company authorized to transact the business of insurance in the State of California at
27 all times mentioned herein. Save and except as expressly admitted herein, UNUM denies each
28 and every remaining allegation contained in paragraph 7 of plaintiff's complaint

1 10. Answering paragraph 8 of plaintiff's complaint, UNUM admits that it received
2 information that plaintiff was working as a pediatric physician at some of the time but not all of
3 the time mentioned herein. Save and except as expressly admitted herein, UNUM denies each
4 and every remaining allegation contained in paragraph 8 of plaintiff's complaint.

5 11. Answering paragraph 9 of plaintiff's complaint, UNUM admits that plaintiff
6 worked for HIFY at some of the time, but not all of the time mentioned in paragraph 9 of
7 plaintiff's complaint. Save and except as expressly admitted herein, UNUM denies each and
8 every remaining allegation contained in paragraph 9 of plaintiff's complaint.

9 12. Answering paragraph 10 of plaintiff's complaint, UNUM admits that HIFY
10 purchased group long term disability insurance, policy number 108878 for its eligible employees.
11 Save and except as expressly admitted herein, UNUM denies each and every remaining
12 allegation contained in paragraph 10 of plaintiff's complaint.

13 13. Answering paragraph 11 of plaintiff's complaint, UNUM lacks sufficient
14 information and belief as to the allegations contained therein and on that basis can neither admit
15 or deny the allegations contained in paragraph 11 of plaintiff's complaint.

16 14. Answering paragraph 12 of plaintiff's complaint, UNUM denies each and every
17 allegation contained in paragraph 12 of plaintiff's complaint.

18 15. Answering paragraph 13 of plaintiff's complaint, UNUM denies each and every
19 allegation contained in paragraph 13 of plaintiff's complaint.

20 16. Answering paragraph 14 of plaintiff's complaint, UNUM denies each and every
21 allegation contained in paragraph 14 of plaintiff's complaint.

22 17. Answering paragraph 15 of plaintiff's complaint, UNUM denies each and every
23 allegation contained in paragraph 15 of plaintiff's complaint.

24 18. Answering paragraph 16 of plaintiff's complaint, UNUM denies each and every
25 allegation contained in paragraph 16 of plaintiff's complaint.

26 19. Answering paragraph 17 of plaintiff's complaint, a response from UNUM is not
27 required.

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1 20. Answering paragraph 18 of plaintiff's complaint, a response from UNUM is not
2 required.

3 21. Answering paragraph 19 of plaintiff's complaint, a response from UNUM is not
4 required.

5 22. Answering paragraph 20 of plaintiff's complaint, a response from UNUM is not
6 required.

7 23. Answering paragraph 21 of plaintiff's complaint, a response from UNUM is not
8 required.

9 24. Answering paragraph 22 of plaintiff's complaint, UNUM admits that Dr. Shalwitz
10 applied for long term disability benefits on or before July 31, 2006. Save and except as expressly
11 admitted herein, UNUM denies each and every remaining allegation in paragraph 22 of
12 plaintiff's complaint.

13 25. Answering paragraph 23 of plaintiff's complaint, UNUM states that it issued its
14 initial decision to deny benefits to plaintiff on or about December 12, 2006. Save and except as
15 expressly admitted herein, UNUM denies each and every remaining allegation in paragraph 23 of
16 plaintiff's complaint.

17 26. Answering paragraph 24 of plaintiff's complaint, UNUM is without sufficient
18 information or belief to either admit or deny the allegations contained in paragraph 24 plaintiff's
19 complaint and on that basis denies the same.

20 27. Answering paragraph 25 of plaintiff's complaint, UNUM admits that it again
21 issued an initial decision to deny benefits to plaintiff on or about July 30, 2007. Save and except
22 as expressly admitted herein, UNUM denies each and every remaining allegation in paragraph 25
23 of plaintiff's complaint.

24 28. Answering paragraph 26 of plaintiff's complaint, UNUM admits that plaintiff's
25 claim is excluded by the pre-existing provision in the policy. Save and except as expressly
26 admitted herein, UNUM denies each and every remaining allegation contained in paragraph 26 of
27 plaintiff's complaint.

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1 29. Answering paragraph 27 of plaintiff's complaint, UNUM admits that it reversed
2 its initial decision because UNUM determined that more information should be obtained.
3 UNUM further admits that this demonstrates that UNUM provided a full and fair review of
4 plaintiff's claim. Save and except as expressly admitted herein, UNUM denies each and every
5 remaining allegation in paragraph 27 of plaintiff's complaint.

6 30. Answering paragraph 28 of plaintiff's complaint, UNUM denies each and every
7 allegation contained in paragraph 28 of plaintiff's complaint.

8 31. Answering paragraph 29 of plaintiff's complaint, UNUM denies each and every
9 allegation contained in paragraph 29 of plaintiff's complaint.

10 32. Answering paragraph 30 of plaintiff's complaint, UNUM admits that it is the
11 claims review fiduciary. Save and except as expressly admitted herein, UNUM denies each and
12 every remaining allegation contained in paragraph 30 of plaintiff's complaint.

13 33. Answering paragraph 31 of plaintiff's complaint, UNUM denies each and every
14 allegation contained in paragraph 31 of plaintiff's complaint.

15 34. Answering paragraph 32 of plaintiff's complaint, a response from UNUM is not
16 required.

17 35. Answering paragraph 33 of plaintiff's complaint, a response from UNUM is not
18 required.

19 36. Answering paragraph 34 of plaintiff's complaint, a response from UNUM is not
20 required.

21 37. Answering paragraph 35, UNUM incorporates by reference all the foregoing
22 paragraphs as though set forth fully herein.

23 38. Answering paragraph 36 of plaintiff's complaint, UNUM denies that plaintiff was
24 a participant in or beneficiary of the UNUM group long term disability policy at any of the times
25 mentioned herein. UNUM denies each and every allegation contained in paragraph 36 of
26 plaintiff's complaint.

27 39. Answering paragraph 37 of plaintiff's complaint, UNUM denies each and every
28 allegation contained in paragraph 37 of plaintiff's complaint.

1 40. Answering paragraph 38 of plaintiff's complaint, UNUM denies each and every
2 allegation contained in paragraph 38 of plaintiff's complaint.

3 41. Answering paragraph 39 of plaintiff's complaint, UNUM denies each and every
4 allegation contained in paragraph 39 of plaintiff's complaint.

5 42. Answering paragraph 40 of plaintiff's complaint, UNUM denies each and every
6 allegation contained in paragraph 40 of plaintiff's complaint.

7 43. Answering paragraph 41 of plaintiff's complaint, UNUM denies each and every
8 allegation contained in paragraph 41 of plaintiff's complaint.

9 44. Answering paragraph 42 of plaintiff's complaint, UNUM denies each and every
10 allegation contained in paragraph 42 of plaintiff's complaint.

11 45. Answering paragraph 43 of plaintiff's complaint, a response from UNUM is not
12 required.

13 46. Answering paragraph 44 of plaintiff's complaint, UNUM denies each and every
14 allegation contained in paragraph 44 of plaintiff's complaint.

15 47. Answering paragraph 45 of plaintiff's complaint, UNUM denies each and every
16 allegation contained in paragraph 45 of plaintiff's complaint.

17 48. Answering paragraph 46 of plaintiff's complaint, UNUM avers that under the
18 terms of the UNUM group long term disability policy, plaintiff is not entitled to disability
19 benefits, and therefore denies each and every allegation contained in paragraph 46 of plaintiff's
20 complaint.

21 49. Answering paragraph 47 of plaintiff's complaint, UNUM admits that this matter is
22 governed by ERISA although plaintiff was not a participant in or beneficiary of the UNUM
23 group long term disability plan. UNUM is not required to respond to legal conclusions. Save
24 and except as expressly admitted herein, defendant denies each and every remaining allegation in
25 paragraph 47 of plaintiff's complaint.

26 50. Answering paragraph 48, UNUM incorporates by reference all the foregoing
27 paragraphs as though set forth fully herein.

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1 51. Answering paragraph 49 of plaintiff's complaint, UNUM admits that it was the
2 claims review fiduciary and that HIFY is the plan administrator of the UNUM group long term
3 disability plan. Save and except as expressly admitted herein, UNUM denies each and every
4 remaining allegation contained in paragraph 49 of plaintiff's complaint.

5 52. Answering paragraph 50 of plaintiff's complaint, a response from UNUM is not
6 required.

7 53. Answering paragraph 51 of plaintiff's complaint, UNUM admits that it is the
8 claims review fiduciary of the UNUM group long term disability plan. Save and except as
9 expressly admitted herein, UNUM denies each and every remaining allegation contained in
10 paragraph 51 of plaintiff's complaint.

11 54. Answering paragraph 52 of plaintiff's complaint, plaintiff purports to cite the
12 provisions of 29 U.S.C. § 1109(a). UNUM is not required to respond to legal conclusions and on
13 that basis denies each and every allegation contained in paragraph 52 of plaintiff's complaint.

14 55. Answering paragraph 53 of plaintiff's complaint, plaintiff purports to cite to a
15 statute setting forth fiduciary duties under ERISA. UNUM is not required to respond to legal
16 conclusions and on that basis denies each and every allegation contained in paragraph 53 of
17 plaintiff's complaint.

18 56. Answering paragraph 54 of plaintiff's complaint, and subparts (a) through (m)
19 contained therein, UNUM denies each and every allegation of paragraph 54 and subparts (a)
20 through (m) of plaintiff's complaint.

21 57. Answering paragraph 55 of plaintiff's complaint, UNUM denies each and every
22 allegation contained in paragraph 55 of plaintiff's complaint.

23 58. Answering paragraph 56 of plaintiff's complaint, UNUM denies each and every
24 allegation contained in paragraph 56 of plaintiff's complaint.

25 59. Answering paragraph 57, UNUM incorporates by reference all of the foregoing
26 paragraphs as though set forth fully herein.

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1 60. Answering paragraph 58 of plaintiff's complaint, plaintiff purports to cite the
2 provisions of ERISA § 502(a)(3). UNUM is not required to respond to legal conclusions and on
3 that basis denies each and every allegation contained in paragraph 58 of plaintiff's complaint.

4 61. Answering paragraph 59 of plaintiff's complaint, UNUM denies each and every
5 allegation contained in paragraph 59 of plaintiff's complaint.

6 62. Answering paragraph 60 of plaintiff's complaint, UNUM denies each and every
7 allegation contained in paragraph 60 of plaintiff's complaint.

8 63. Answering paragraph 61, UNUM incorporates by reference all of the foregoing
9 paragraphs as though set forth fully herein.

10 64. Answering paragraph 62 of plaintiff's complaint, UNUM denies that plaintiff was
11 a participant in or a beneficiary of the UNUM group long term disability plan at any of the time
12 mentioned here. UNUM denies each and every allegation contained in paragraph 62 of
13 plaintiff's complaint.

14 65. Answering paragraph 63 of plaintiff's complaint, UNUM denies each and every
15 allegation contained in paragraph 63 of plaintiff's complaint.

16 66. Answering paragraph 64 of plaintiff's complaint, UNUM denies each and every
17 allegation contained in paragraph 64 of plaintiff's complaint.

18 67. Answering paragraph 65 of plaintiff's complaint, UNUM denies each and every
19 allegation contained in paragraph 65 of plaintiff's complaint.

20 68. Answering paragraph 66 of plaintiff's complaint, UNUM admits the allegations
21 contained in paragraph 66 of plaintiff's complaint.

22 69. Answering paragraph 67 and subparts (a) through (g) contained therein, UNUM
23 denies each and every allegation contained in paragraph 67 and subparts (a) through (g) of
24 plaintiff's complaint.

25 70. Answering paragraphs 1 through 7 of plaintiff's prayer for relief, UNUM denies
26 that plaintiff is entitled to any benefits under the UNUM policy, denies that plaintiff is entitled to
27 attorneys' fees nor any expenses allegedly incurred; denies that plaintiff has been damaged in the

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1 amount alleged, in any amount, or at all, and further denies that plaintiff is entitled to any relief
2 whatsoever.

3 **WHEREFOR**, UNUM prays for judgment as set forth below.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 1. Plaintiff's purported claims for relief fails to state facts sufficient to state a claim
7 upon which relief may be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 2. Plaintiff's recovery, if any, is limited by the terms, conditions, limitations,
10 exclusions and other provisions of the Plan.

11 **THIRD AFFIRMATIVE DEFENSE**

12 3. Plaintiff's claims against defendant arise solely under ERISA. Therefore,
13 plaintiff's rights and remedies are limited solely to those afforded under ERISA.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 4. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 5. Plaintiff has failed to mitigate her alleged damages, if any.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 6. Plaintiff's claims are barred, in whole or in part, to the extent that plaintiff has
20 failed to perform all of her obligations under the UNUM group long term disability plan at issue.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 7. The decision on plaintiff's claim was neither arbitrary nor capricious.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 8. No act or omission of UNUM constitutes the proximate or legal cause of any of
25 plaintiff's damages, if any, because, amongst other things, the terms of the alleged contract of
26 insurance did not allow for payment of the claimed benefits.

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1 **NINTH AFFIRMATIVE DEFENSE**

2 9. Any alleged damage suffered by plaintiff was in no way caused by, or the result
3 of, any fault, act or omission by UNUM, but was caused by circumstances, persons, and/or
4 entities, including plaintiff, for which and/or whom UNUM is not and may not be held
5 responsible, and for which UNUM cannot be held liable.

6 **TENTH AFFIRMATIVE DEFENSE**

7 10. Plaintiff's conduct bars, estops and/or constitutes a waiver of the claims asserted
8 in plaintiff's complaint.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 11. Plaintiff's complaint fails to state facts sufficient to entitle plaintiff to an award of
11 attorneys' fees under ERISA.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 12. While denying any liability to plaintiff, there is no "vesting" of benefits under the
14 policy, and any claim for benefits based on an alleged continuing disability must be supported by
15 proof of such continuing disability. Benefits cannot be awarded prospectively.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 13. UNUM Life Insurance Company of America is an improper defendant in that
18 ERISA permits suits to recover benefits only against the Plan as an entity. *Everhart v. Allmerica*,
19 275 F.3d 751 (9th Cir. 2001) and *Ford v. MCI Communications Corp. Health and Welfare Plan*,
20 399 F.3d 1076 (9th Cir. 2005).

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 14. Plaintiff's claims are barred in whole or in part by the contractual limitation
23 contained in the plan.

24 **FIFTEENTH AFFIRMATIVE DEFENSE**

25 15. Plaintiff's claims are barred in whole or in part by the contractual limitation
26 provided for by Insurance Code, Section 10350.11 and included in the UNUM group long term
27 disability plan.

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WHEREFOR, UNUM prays for judgment as follows:

1. That plaintiff take nothing by reason of her complaint;
2. For defendant's attorneys' fees and costs of suit incurred herein; and,
3. For such other and further relief as the Court deems just and proper.

RIMAC MARTIN, P.C.

DATED: September 4, 2008

By: /s/ ANNA M. MARTIN
ANNA M. MARTIN
Attorneys for Defendant
UNUM LIFE INSURANCE COMPANY OF
AMERICA